

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED  
01/30/02  
MICHAEL N. MILBY, CLERK  
BY DEPUTY *N. Jip*

MARK NEWBY,	§
	§
Plaintiff,	§
	§
vs.	§
	§
ENRON CORP., ET AL.,	§
	§
Defendants.	§
	§

Civil Action No. H-01-3624  
(Securities Suits)

STARO ASSET MANAGEMENT, LLC'S BRIEF IN SUPPORT OF AMALGAMATED  
BANK'S PENDING MOTION TO DEPOSE KENNETH LAY REGARDING  
DISSIPATION AND CONCEALMENT OF ASSETS

Staro Asset Management, L.L.C. files its brief in support of Amalgamated Bank's motion to depose Kenneth Lay regarding dissipation and concealment of assets.

1. Judge Rosenthal entered her order (No. 111) setting out a district's court's power to freeze assets, but denying Amalgamated's motion for lack of evidence to support a freeze of the assets of certain Enron insiders, including defendant Lay. The order provided an opportunity for Amalgamated to brief the issue of what discovery was appropriate, setting a deadline of January 23, 2002 for Amalgamated and January 6, 2002 for defendants.

2. The Court extended the briefing deadlines to January 25 and February 8, respectively, by order signed January 25, 2002 (No. 182). Amalgamated filed its Supplemental Brief in Response to the Court's January 8, 2002, Memorandum and Order January 25, 2002.

3. Staro asks leave to file this brief in support of the motion, even though movant's deadline has passed, on the ground that new evidence has surfaced which the Court ought to consider, specifically the interview on national television given Monday, January 28, 2002, by Mrs. Linda Lay, wife of defendant Lay.

4. A transcript of the interview, found on NBC's website, is attached. See Exhibit "A" to the attached declaration of Joseph A. McDermott, III. Mrs. Lay states about she and her husband:

**"We're fighting for liquidity. We don't want to go bankrupt. And we've had long-term investments and those long-term investments have cash calls. Other than the home we live in, everything we own is for sale."**

**Myers (interviewer): "According to published reports, your husband earned about \$300 million in compensation and stock from Enron over the last four years. What happened to all that money?"**

**Lay: "By anyone's standards, it was a massive amount of money and it's gone. It's gone. There's nothing left. Everything we had mostly was in Enron stock. I mean, it was him. Ken built the company. We believed in it. It was a good stock."**

5. The Lays' assets are presumptively community property. Tex. Family Code § 3.003. Thus Mrs. Lay is speaking as an owner when she describes the rush to convert assets to cash, the fight for "liquidity". This wholesale selling is evidence of dissipation of assets. January 8, 2002 Memorandum Opinion and Order, at 38, citing *United States ex rel. Rahman v. Oncology Associates, P.C.*, 198 F.3d 489, 493 (4<sup>th</sup> Cir. 1999). Cash is a lot easier to wire overseas than a house in Aspen. By her own remarks, considerable dissipation – \$300,000,000.00 – has already occurred (some of which, admittedly, may be losses in Enron stock, but that does not account for the apparently

vanished massive proceeds from stock sold by defendant Lay before the collapse of Enron). To the extent the Lays answer "cash calls" related to "long-term investments" while this litigation is pending, that cash may be put beyond the reach of any judgment in this matter.

6. It's more than just arguable that these remarks, standing with the evidence already in the record, would justify the Court's now exercising its equitable powers to freeze Kenneth Lay's assets. Staro, believes, however, that the fairest course would be for the Court to lift the stay to allow immediate, thorough, particularized discovery on the issue of asset dissipation and concealment by defendant Lay, to be followed by swift reconsideration of Amalgamated's motion, should the evidence developed warrant it.

Dated: January 30, 2002

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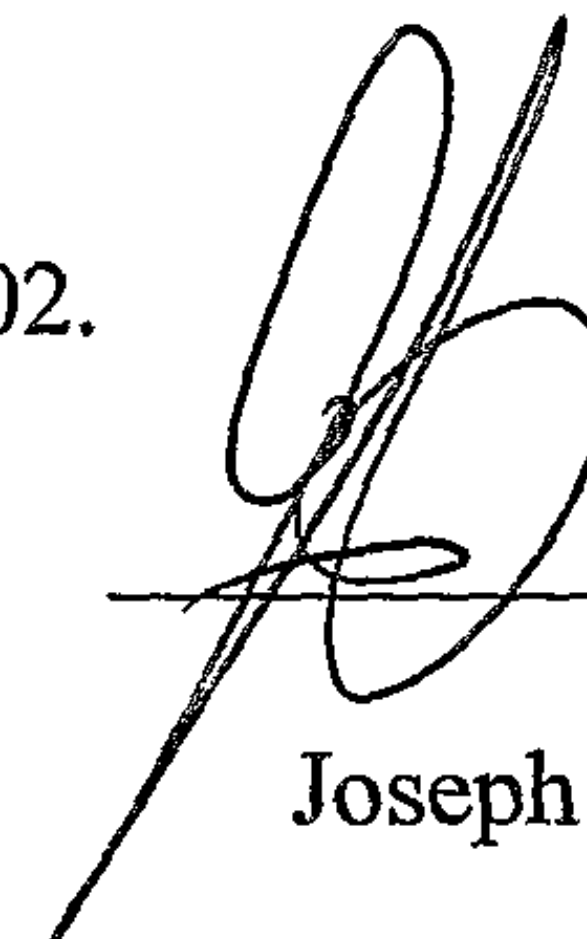
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**DECLARATION OF JOSEPH A. McDERMOTT, III**

I, Joseph A. McDermott, III, declare as follows:

1. I am a lawyer for Staro Asset Management LLC, a plaintiff in these matters.
2. I became aware that Linda Lay, wife of defendant Kenneth Lay, gave an interview which was nationally televised on NBC, Monday, January 28, 2002.
3. I pulled the attached transcript of that interview from the NBC website. The URL is <http://www.msnbc.com/news/695478.asp>.

Signed under the pains and penalties of perjury, January 30, 2002.



Joseph A. McDermott, III



Linda Lay: "This is a mass hysteria of who can get the news first on, when, how, why. Suspicion and they're lumping everybody together. Nobody even really knows what the truth is yet. The only truth I know, 100 percent for sure, is that my husband is an honest, decent, moral human being who would do absolutely nothing wrong. That I know 100 percent."

Lisa Myers: "Does it seem unfair to you that your husband has become the focal point of all the anger that's out there?"

Linda Lay: "No, I don't think it seems unfair, because he's chairman, C.E.O.. The buck stops at his desk."

Lisa Myers: "So you can understand all the anger..."

Lay: "Absolutely."

Myers: "...and the sorrow..."

Lay: "Absolutely."

Myers: "...and the loss?"

Lay: "Sure. Absolutely. He is at the top. That's where it ought to be. If I were back there listening to all of the things that were being said, I would absolutely have to say that, 'What is wrong here? How can all of this be happening without something, someone doing something terribly evil?'"

Myers: "I don't think most people could imagine what it would be like to be in the center of this vortex."

Lay: "The most difficult part of it, Lisa, is that there are so many people whose lives are ruined and are getting ruined. And it's just growing as each day goes by. But there isn't any one person that's ever dealt with Enron that isn't drastically affected by it. And its effects are so damaging."

Myers: "There was a tragedy in the Enron family on Friday. The former vice chairman, Cliff Baxter, committed suicide. That must have been a terrible blow."

Lay: "Horrible."

Myers: "Did you have any idea he had been in that much pain or difficulty?"

Lay: "No, I didn't. My husband had spoken to him not long ago. And Cliff is a, was a wonderful man. It's a perfect example of how the media can play such havoc and destruction in people's lives and this is the ultimate. This is a loss of life. This is something he can't get back."

Myers: "Can you see how someone would be driven to that?"

Lay: "The intensity of it all. I can't possibly imagine how each and every employee is dealing with all of that."

Lay: "And now, to be ashamed that you work there. To be ashamed of any involvement you might have had with Enron. That your neighbors may look at you as suspect? Of maybe being part of this horrible, evil, sinister act that's going on there. And it's tragic that Cliff, somehow, couldn't handle that. It makes my heart ache, it makes Ken's heart ache. Had we known, we would have picked up the phone and called. We would have gone and been with him. We would have done anything we could to have helped him, to help his family. But we had no idea that he was in that kind of pain."

Married 20 years, Ken and Linda Lay have five children, and six grandchildren. This was the year they had planned to retire. Now, despite making hundreds of millions of dollars, they're working around the clock to avoid personal bankruptcy.

Lay: "We're fighting for liquidity. We don't want to go bankrupt. And we've had long-term investments and those long-term investments have cash calls. Other than the home we live in,

EXHIBIT "A"

everything we own is for sale.”

Myers: “According to published reports, your husband earned about \$300 million in compensation and stock from Enron over the last four years. What happened to all that money?”

Lay: “By anyone’s standards, it was a massive amount of money and it’s gone. It’s gone. There’s nothing left. Everything we had mostly was in Enron stock. I mean, it was him. Ken built the company. We believed in it. It was a good stock.”

Myers: “So you were not very diversified?”

Lay: “Not really. Not really at all.”

Myers: “So even your family’s 401(k) was in Enron stock?”

Lay: “Absolutely. We had 19 choices of where to put our money in our 401(k), just like all the other employees...”

Myers: “Of Enron?”

Linda Lay: “...of Enron. Why wouldn’t I put it in Enron? Why wouldn’t I? My husband was Enron. He believed in it. He was running Enron.”

Ken Lay’s wife and their five children are breaking their silence to rebut what they say are terrible misconceptions about him.

Ken Lay’s daughter: “His generosity, to be honest, is beyond anything I’ve ever experienced or have seen in anyone.”

Ken Lay’s son: “He’s probably the most generous, ethical giving man that I’ve ever met.”

Ken Lay’s daughter: “Obviously, if he knew that something was going on with the company, he would’ve cashed, you know, all of his stocks.”

Linda Lay: “He spent his entire life making absolutely certain that there was never, ever a point in his life that anyone could say he didn’t have integrity.”

Yet today, 10 congressional committees and a criminal investigation by the Justice Department are doing just that — asking just what he knew and when.

Lisa Myers: “You says he’s a straight shooter, yet there are experts who say that some of the things that went on at Enron were not kosher.”

Lay: “He can’t be everywhere Lisa. He has to run a big company. He can’t do everyone’s job for them.”

Myers: “If he’s a visionary leader, people might ask how could he not have known all that was going on in his own company.”

Lay: “There are some things that he wasn’t told Lisa. There are some things that the board of directors weren’t, didn’t know. But that will all come out in the investigation. Those things will all come to light. That’s what we’re all praying for is that they’ll get the truth and they’ll bring it all out.”

What about Sherron Watkins, the Enron whistleblower who warned Ken Lay last August that the company was about to “implode in a wave of accounting scandals”? Linda Lay actually praises her.

Lay: “Frankly had I been an employee there and I had seen what she had seen, I would have done exactly the same thing.”

But why didn’t her husband do more about that warning?

Lay: “He had their outside counsel come in and the accounting firm look at it. And they came back and told him it was fine.”

Myers: “In retrospect, does he think those people let him down?”

Lay: “Absolutely, absolutely. Never, never, not for one second would he have allowed



anything to go on that was illegal. If those people had come back to him and told him there was something wrong, he would have stopped it and fixed it."

Myers: "Much has been made of the fact that in October, even after Enron announced a billion dollars in losses, your husband went on television, and basically reassured everything would be OK and six weeks later the company went bankrupt."

Lay: "My husband tells the truth. He's not a liar. He totally, 100 percent, believed in it. He believed it would be OK."

Myers: "At what point did he realize that he couldn't save that company? That he couldn't turn it around?"

Lay: "He came home one night days — oh, I want to say literally two or three days maybe before everything just fell apart. And then..."

Myers: (whispers) "It's OK."

Lay: (crying) "Ken, he was emotional about it. And it was..."

Lay: "...but he was, he said he just didn't think he could stop it. Oh. He said he tried everything, everything he could think of, and he couldn't stop it."

Myers: "Was he just devastated?"

Lay: "Devastated. Devastated for his employees. He's the type of leader who used to walk around the floors and talk to his employees. And he knew them and knew their families. And so many of them are our friends, relatives."

Myers: "What do you say to the thousands of employees and investors who trusted your husband, and lost everything, feel betrayed?"

Lay: "We've lost everything. But I don't feel Ken's betrayed me. I'm desperately sad, but I don't know where to place the anger. I don't know who to get mad at. I just know my husband didn't have any involvement."

Just last week her husband stepped down as chairman & CEO of Enron — a post he returned to five months ago — after Enron's then-CEO suddenly quit.

Myers: "Many people will be stunned to learn that your husband, even today, still believes he can bring Enron back."

Lay: "Absolutely. One hundred percent. There are still 19,000 employees. They're making money, Lisa, this is a good company. It hasn't all gone bad."

Myers: "If you could go back and change one thing in this entire episode, what would it be?"

Lay: "Oh (laughs), selfishly? Probably that my husband never went back to Enron."

Linda Lay: "Well, I can say we're closer to his parents than we are to him. Our friendship started with his parents, who are wonderful people, wonderful friends. And they're a strong, loving, supportive family as well. We know all of the children, know the family, and we are closer to some family members than others."

Lisa Myers: "Are you closer to George W. or to some of his brothers and sisters?"

Lay: "I'm actually closer to some of his brothers and sisters than to George W. But we certainly know George W. and Laura. And I have a, I think, a very good relationship with them."

Myers: "Have you heard from former President Bush and Mrs. Bush during all this?"

Lay: "I have not, but Ken has talked to George Sr."

Myers: "Have they been supportive?"

Lay: "Very supportive. Very loving people. Wonderful people."

Linda Lay is diplomatic about the current president's effort to distance himself from her

husband and Enron.

President Bush: (sound on tape) "What I'm outraged about is that share holders and employees didn't know all the facts about Enron."

Lay: "If he believes they didn't know the full story, then that's why he's outraged. But there's so many facts that we don't know, totally don't know."

Myers: "Did it hurt to hear him say that?"

Lay: "Not if he believes it. I know George W. talked about his mother-in-law having lost \$8,000 in her stock. I have a 93-year-old father, and he of course believed in Ken and believed in Enron. His entire retirement is in Enron stock. He's lost the bulk of his wealth."

What about the fact that George W. Bush calls Ken Lay, Kenny Boy? Proof some say of their closeness.

Lay: "That's my nickname for my husband which he overheard."

Myers: "So it wasn't original with the President?"

Lay: "It certainly wasn't. Ken's mother called him Kenny and I called him Kenny Boy."

Lay was born in tiny Tyrone, Missouri, the middle child of Ruth and Omer Lay. His father was a minister. Money was so tight, that one Thanksgiving the family had cold cuts instead of turkey.

Lay put himself through college, graduating Phi Beta Kappa in economics from the University of Missouri. That's where he met his first wife Judie. They're divorced, but even today, with all that's happened at Enron, she supports him.

Judie Lay: "I would describe him as very smart, very honest, good sense of values."

Ken lay married his second wife Linda soon after their divorce. Surprisingly, the ex-wife now often joins them on family vacations, to the delight of their children.

Ken Lay's daughter: "We all spend every holiday together. Even though they went their separate ways at one time, he still holds her in the highest regard."

"What's important is you spend your whole life working on something, building something, your career, your integrity, your reputation, your character. And then to have other people destroy that? How do you rebuild that? How do you go back and fix that? It doesn't matter how much money you have. You can't buy that."

Linda Lay: "We've been poor. And we've been rich. And we were happy when we were poor and we were happy when we were rich. And we're strong, and we're survivors and, as far as that goes, that isn't a problem. That's the least of our problems, Lisa."

Myers: "So losing all that money is not the worst of it?"

Lay: "Oh no, oh no. Yeah, because it's just stuff. What's important is you spend your whole life working on something, building something, your career, your integrity, your reputation, your character. And then to have other people destroy that? How do you rebuild that? How do you go back and fix that? It doesn't matter how much money you have. You can't buy that."

Ken Lay's children agree.

Ken Lay's son: "I don't appreciate the way that his integrity has been in question by people who don't even know him."

Ken Lay's daughter: "He does the right thing. And if the line is here Lisa, he doesn't walk here. He walks way over there."

Ken Lay's son: "There's kind of legal, there's ethical, and then there's where the Ken Lay standard is, and it's beyond ethical."

But now Ken Lay is fighting for his reputation, and Enron's future. A family minister can see



the toll.

Rev. Ed Young: "I've seen him age almost over night. Because he is broken and in real pain at this hour, trying to decide exactly what he can do."

Linda Lay: "He's working as hard as he can to do whatever he can to help Enron and it's employees survive."

Lisa Myers: "You say that you always see light at the end of the tunnel."

Lay: "Always."

Myers: "Do you see any light at the end of this one?"

Lay: "Absolutely. Absolutely. God is good. Truth wins out. As my husband always says, 'Good will prevail.'"